

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: JOSEPH C. HURLBURT
Serial No.: 10/729,896 Art Unit: 3681
Filed: December 8, 2003 Examiner: Saul J. Rodriguez
For: TRAILER HAVING TILT AND DUMP FUNCTIONS

Commissioner for Patents
Mail Stop PETITIONS
P. O. Box 1450
Alexandria, VA 22313-1450

S I R:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT (37 CFR 1.181(a))

AND

PETITION TO REVIVE AN ABANDONED APPLICATION (UNDER 37 CFR 1.137(b))

On February 26, 2008, a Notice of Abandonment was mailed to the undersigned attorney and received thereby in a timely manner. This Notice of Abandonment identifies the reason for abandonment as the failure to receive a proper response to the Final Office Action within the shortened statutory period. The date of the Final Office Action was January 12, 2006; however, since that Final Office Action, further prosecution has taken place, including a Non-Final Office Action dated January 30, 2007, and a response thereto dated April 26, 2007. In fact, the Examiner approved the application following the April 26, 2007 Amendment and forwarded the application for allowance. The Notice of Allowance was never mailed and never received by the undersigned attorney.

This Petition is being filed as a Petition to Withdraw the Holding of Abandonment and, in the alternative, as a Petition to Revive an Abandoned Application. The

filing fees for the Petition to Revive are paid herewith, as is a copy of the last Amendment that was filed in this application. The undersigned attorney believes that this application presents an unusual situation that doesn't fit squarely within either Petition. Thus, a combined Petition is presented. In the event the Petition to Withdraw the Holding of Abandonment is favorably decided, Applicant requests that the Petition fee for the Petition to Revive An Abandoned Application submitted herewith be refunded to the undersigned attorney.

The pertinent facts follow below in a timeline:

1. December 8, 2003 – Applicant's Reissue Application was filed.
2. August 20, 2005 – This Reissue Application was made Special by a Petition to Make Special.
3. September 22, 2005 – A First Non-Final Office Action was mailed.
4. December 21, 2005 – Applicant arranges for an interview with Examiner Lowe on December 21, 2005, but Examiner Lowe was unavailable and SPE Eileen Lillis substituted. The interview summary record indicates that the rejections were in error.
5. December 21, 2005 – Applicant filed an Amendment formally expressing these same arguments presented during the interview.
6. January 12, 2006 – A Final Office Action was mailed by Examiner Lowe, ignoring the comments made in the Interview Summary of December 21, 2005.
7. April 12, 2006 – An Amendment After Final was received by the Patent Office.
8. May 3, 2006 – An Advisory Action was mailed refusing entry of the Amendment After Final.
9. May 12, 2006 – The undersigned attorney has a telephonic interview with SPE Eileen Lillis who informed the undersigned attorney that she would withdraw the finality of the previous office action and enter the Amendment After Final, and that a new action, probably a Notice of Allowance, would be forthcoming.
10. July 21, 2006 – SPE Lillis mails the Interview Summary Record identifying the May 12 interview and reiterates the comments made during the interview.
11. January 30, 2007 – A new Non-Final Office Action is mailed.

12. April 16, 2007 – Applicant interviews Examiner Lowe and an Interview Summary Record is completed.

13. April 26, 2007 – Applicant files an Amendment corresponding to the discussions with Examiner Lowe during the interview.

14. July, 2007 (+/-) – Examiner Lowe indicates allowance of the claims by making appropriate notation in the file, but the Notice of Allowance was not mailed. Applicant found out about this indication of allowance through telephone calls in November and December.

15. November/December, 2007 – The undersigned attorney is making calls to Examiner Lowe, SPE Rodriguez, Legal Affairs, and others at the U. S. Patent Office to determine the status of the application.

16. February 26, 2008 – Notice of Abandonment is mailed.

Petition to Withdraw Holding of Abandonment:

At no point in time, as far as Applicant is aware, from April, 2006, until November 2007, was this application deemed abandoned. SPE Lillis expressly agreed on May 12, 2006, during the Examiner Interview, to withdraw the finality of the Final Office Action and to enter the previous Amendment After Final. The subsequent Office Action from Examiner Lowe was literally in accordance with that direction. Moreover, the form of the claim amendments in the last Amendment was based on the state of the claims following the entry of the Amendment After Final.

Furthermore, the claims have been placed into a form that Examiner Lowe agreed was patentable following the last Amendment. Rendering this patent application abandoned now, almost two years after the mailing of the Final Office Action, is not only inequitable, but a tremendous waste of time and money. Moreover, Applicant successfully petitioned the Patent Office to make this application special over two and a half years ago, and Applicant still doesn't have a final conclusion to his reissue application.

It is Applicant's understanding that the reason this application has been abandoned is because SPE Lillis failed to mail the Interview Summary Record on a timely basis, *i.e.* before the expiration of the six month statutory period that ended on July 12, 2006. This

failure to enter the Interview Summary Record is not Applicant's error. The directions issued by SPE Lillis on May 12, 2006, were followed: the finality of the Final Office Action was withdrawn, the Amendment After Final was entered, a new Office Action was issued (even if it wasn't the Notice of Allowance that was expected), and prosecution of the application continued to the point of allowance of the claims. The Interview Summary Record mailed on July 21, 2006, is simply a memorial of the agreement that had been reached and followed on May 12, 2006.

It is Applicant's understanding that if the Interview Summary Record had been mailed on July 12, 2008, that there would have not been an abandonment of the application. Because SPE Lillis mailed the Interview Summary Record nine days after the expiration of the six month statutory period, the application was abandoned. Nevertheless, the effect of the agreement by SPE Lillis is exactly the same, *i.e.* the finality was withdrawn and the amendment was entered. Furthermore, this agreement was acted upon and relied upon for subsequent prosecution, including both office actions and amendments. Applicant cannot control the actions of SPE Lillis; however, as an SPE her agreement should be capable of being relied upon. Furthermore, since SPE Lillis agreed to withdraw the finality of the office action and to enter the amendment, and further since this agreement was relied upon both by the Examiner on behalf of the Patent Office and by Applicant, the Patent Office should be estopped from dishonoring that agreement simply because SPE Lillis failed to mail the memorandum of the interview within the statutory response period. Applicant respectfully submits that upholding the abandonment of this application is inequitable.

For these reasons, Applicant respectfully requests that the holding of abandonment for his reissue patent application be withdrawn and that the application be passed to allowance so that a Notice of Allowance can be issued with the claims in the form set forth in the April 26, 2007 Amendment.

Petition to Revive Application:

In the event the Petition to Withdraw Abandonment fails, Applicant respectfully petitions that his examination be revived. The undersigned attorney hereby verifies that such abandonment was unintentional. Applicant respectfully submits that the above-stated facts clearly support his contention that the abandonment was unintentional. Applicant was led to believe that the finality of the Final Office Action of January 12, 2006 had been withdrawn, the corresponding Amendment After Final admitted, and that the prosecution of this application was continuing through to the time the application was said to be allowed.

Applicant is submitting herewith the fee of \$770.00 for the submission of this Petition to Revive.

Applicant is required to submit the required reply, unless the reply has been previously filed. As set forth in MPEP Section 711.03(c)(II)(A)(2)(b), where Abandonment is for Failure to Reply to a Final Action, this Reply is defined as a Notice of Appeal, an Amendment that *prima facie* places the application in condition for allowance, an RCE, or the filing of a continuing application. In response to this requirement, Applicant respectfully submits that the Amendment After Final dated in the file history as April 12, 2006, along with the Supplemental Amendment filed April 13, 2006, and the Amendment After Non-Final Rejection dated in the file history as April 26, 2007, have already been filed and made of record. These Amendments were deemed by Examiner Lowe to place the claims in condition for allowance. Therefore, Applicant respectfully submits that these aforementioned Amendments provide a *prima facie* allowance of the application. Applicant respectfully submits that the April 26, 2007, Amendment places the claims in condition for allowance. Accordingly, Applicant believes that no further reply need be submitted with this Petition.

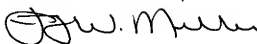
Since this reissue utility application was filed after May 29, 2000, Applicant respectfully submits that a terminal disclaimer is not required.

If the Director requires any further information or documentation, the Director is requested to contact the undersigned attorney.

Favorable consideration of this Petition is courteously solicited. Applicant requests that his application be revived, that the Amendments of record dated April 12, 2006,

April 13, 2006, and April 26, 2007, be entered, that the application be passed to allowance, and that a Notice of Allowance be mailed to the undersigned attorney so that the Issue Fee can be paid.

Respectfully submitted,



Date: March 28, 2008

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